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No. 92-458

In the Supreme Court of the United States

OCTOBER TERM, 1992

ROBERT SCOTT MORELAND, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

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12 pp

QUESTION PRESENTED

Whether, under 18 U.S.C. 3585, a federal inmate is entitled to credit against his sentence for time spent in a community treatment center as a condition of pretrial release on bond.

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OPINIONS BELOW

The opinion of the court of appeals sitting en banc (Pet. App. 1a-29a) is reported at 968 F.2d 655. The opinion of the court of appeals panel (Pet. App. 30a-45a) is reported at 932 F.2d 690.

JURISDICTION

The judgment of the court of appeals was filed on June 30, 1992. The petition for a writ of certiorari was filed on September 14, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. On July 26, 1989, a grand jury in the District of Minnesota indicted petitioner on two counts of bank fraud, in violation of 18 U.S.C. 1344, and two counts of using false social security cards, in violation of 18 U.S.C. 408(g)(2). He was taken into custody on July 28, 1989, and held until September 5, 1989, when he was released on bond. As a condition of his release, petitioner was ordered to reside at the Reentry Services Community Treatment Center (RSCTC). Petitioner resided at RSCTC from September 5, 1989, until March 12, 1990. Pet. App. 2a-3a, 31a.

2. On October 30, 1989, petitioner pleaded guilty to one count of fraud. On February 2, 1990, the district court sentenced him to 18 months' imprisonment. After he began serving his sentence, petitioner filed a request with the Bureau of Prisons seeking credit for the 150 days he spent at RSCTC. The Bureau denied the request on the ground that during that period petitioner had not been in "official detention" within the meaning of 18 U.S.C. 3585(b), the statute governing sentence credit for periods a defendant has spent in detention prior to sentencing. Pet. App. 3a, 32a; Pet. 2, 4-5.

Petitioner then filed a petition under 28 U.S.C. 2255, alleging that he was denied the equal protection of the law by the Bureau's policy of denying sentence credit to defendants released prior to trial on condition that they reside at community treatment centers, while granting credit to defendants completing their sentences at such centers. The district court denied the motion. It found that no equal protection violation had occurred because defendants released pretrial to community treatment

centers are not situated similarly to defendants completing their sentences. Pet. App. 3a-4a.

3. A divided panel of the court of appeals reversed, holding that the time petitioner spent at the community treatment center constituted "official detention" within the meaning of Section 3585. The panel noted that the Bureau of Prisons (BOP) had defined "official detention" to exclude periods of pretrial release when the defendant, as a condition of that release, is required to reside at a community treatment center. The panel held, however, that BOP's interpretation was "unreasonable or contrary to considerations of fairness." Pet. App. 34a-35a. The court reasoned that "[t]he restrictions placed on [petitioner] are similar to those placed on jail prisoners who have work-release privileges, and it cannot be contended that such prisoners are not in 'official detention.'" *Id.* at 35a.[1]

In dissent, Judge Magill argued that the majority erred in failing to defer to the Bureau's interpretation of the statute. Judge Magill also argued that the plain meaning of the term "detention" did not extend to the kinds of restrictions imposed on petitioner. Judge Magill concluded that the term "detention" in Section 3585 should be construed in light of the Bail Reform Act of 1984, 18 U.S.C. 1341 *et seq.*, which makes a clear distinction between release, with or without conditions, and detention. Pet. App. 37a-45a.

4. Sitting en banc, the court of appeals vacated the panel opinion and affirmed the decision of the district court. Pet. App. 1a-29a. The court concluded that, be-

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[1] Because the panel held that petitioner was in "official detention," it did not consider whether he had shown that BOP's denial of sentence credit violated his rights under the Equal Protection Clause.

cause the phrase "official detention" in the statute was ambiguous, the court should defer to the interpretation of BOP, the agency charged with administering the statute. *Id.* at 4a-5a. The court then found that the Bureau had reasonably interpreted the statute to exclude time spent at a community treatment center as a condition of release. The court noted that its decision found support in the decisions of every court of appeals that had addressed the issue except the Ninth Circuit. The court also noted that its interpretation of Section 3585 was consistent with the Bail Reform Act of 1984, which draws a distinction between pretrial release and detention. *Id.* at 7a-11a.[2]

Judge Loken concurred on the ground that the term "official detention" had the same meaning as the term "detention" used in the bail statute, 18 U.S.C. 3142. Judge Loken argued that, because petitioner had not been detained within the meaning of the bail statute, he was not in "official detention" under Section 3585. Judge Heaney dissented. In his view, the term "official detention" encompassed petitioner's stay at the community treatment center.

DISCUSSION

Petitioner asks this Court (Pet. 12-25) to decide whether 18 U.S.C. 3585 requires BOP to award him credit against his sentence for time spent at a community treatment center as a condition of pretrial release. We agree with petitioner that the Court should review that issue.

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[2] The court of appeals also rejected petitioner's equal protection claim. Pet. App. 12a-14a. Petitioner does not raise that claim before this Court.

1. Section 3585, which was enacted as part of the Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, § 212(a)(2), 98 Stat. 2001, and became effective on November 1, 1987, provides that "[a] defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences." The predecessor to Section 3585, which was codified at 18 U.S.C. 3568 (1982), required the Attorney General to award federal prisoners credit toward their sentences for time "spent in custody in connection with the offense or acts for which sentence was imposed." In *United States* v. *Wilson*, 112 S. Ct. 1351, 1354-1356 (1992), this Court held that 18 U.S.C. 3585, like Section 3568, delegates authority to the Attorney General, through BOP, to grant credit against a defendant's sentence for time spent in official detention.

The courts of appeals are divided over whether Section 3585 requires BOP to award credit for periods of residence in a community treatment center, or "halfway house," as a condition of pretrial release on bond. The Fifth and Tenth Circuits agree with the Eighth Circuit that Section 3585 does not require BOP to grant credit against a sentence for the time the defendant has spent in residence at such a facility as a condition of his pretrial release. See *Pinedo* v. *United States*, 955 F.2d 12, 14 (5th Cir. 1992) (no credit under Section 3585 for period of pretrial release spent in a "halfway house"); *United States* v. *Woods*, 888 F.2d 653, 655 (10th Cir. 1989) (same), cert. denied, 494 U.S. 1006 (1990).[3] In contrast,

[3] See also *United States* v. *Becak*, 954 F.2d 386, 387-388 (6th Cir. 1992) (no credit for pretrial home confinement under Section 3585); *United States* v. *Insley*, 927 F.2d 185, 186-187 (4th Cir. 1991) (same); *United States* v. *Zackular*, 945 F.2d 423, 425 & n.2 (1st

the Ninth Circuit has held that BOP's interpretation of Section 3585 to bar the award of sentence credit for a pretrial period of release to a community treatment center is unreasonable and contrary to the statute's plain language. *Mills* v. *Taylor*, 967 F.2d 1397, 1400 (1992).[4]

2. We disagree with the Ninth Circuit's interpretation of Section 3585, and believe that the court of appeals correctly resolved the issue in this case. Because BOP is charged with administering the sentencing credit provision, see *Wilson*, 112 S. Ct. at 1354-1355, its interpretation of Section 3585 is valid unless plainly unreasonable or inconsistent with the statutory language. The plain meaning and legislative history of both Section 3585 and its predecessor, Section 3568, show that Congress did not intend to mandate the award of sentencing credit to defendants released prior to trial on condition that they reside at a community treatment center. "Detention" means "a holding in custody" or "a period of temporary custody prior to disposition by a court." Custody, in

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Cir. 1991) (same); *United States* v. *Edwards*, 960 F.2d 278, 282-283 (2d Cir. 1992) (same).

[4] The courts of appeals have also disagreed about the availability of sentence credit under the predecessor statute, Section 3568, for time spent in a community treatment center, or under other restrictions, as a condition of pretrial release. Compare *Ramsey* v. *Brennan*, 878 F.2d 995, 996 (7th Cir. 1989) (credit not available); *United States* v. *Smith*, 869 F.2d 835, 837 (5th Cir. 1989) (same); *Mieles* v. *United States*, 895 F.2d 887 (2d Cir. 1990) (same); *Villaume* v. *United States Dep't of Justice*, 804 F.2d 498, 499 (8th Cir. 1986) (same), cert. denied, 481 U.S. 1022 (1987), with *Brown* v. *Rison*, 895 F.2d 533, 535-536 (9th Cir. 1990) (credit must be awarded for period in "halfway house"). The Ninth Circuit granted rehearing en banc in *Braun* v. *Scott*, 927 F.2d 1516 (1991), to reconsider its decision in *Brown*, but later dismissed *Braun* as moot. See 938 F.2d 1032 (1991).

turn, is defined as "judicial or penal safekeeping * * * imprisonment or durance of persons or charge of things." See *Webster's Third New International Dictionary* 559, 616 (unabridged) (1976). Thus, detention means "custody," and custody means imprisonment. The term "official detention," therefore, may reasonably be construed to extend only to imprisonment or other strict confinement or control.

A condition of pretrial release requiring a person to reside at a community treatment center does not satisfy that definition. A common sense understanding of "official detention" does not include residence in the environment that is ordinarily found in a community treatment center. Conditions at community treatment centers are neither penal in nature nor nearly so restrictive as the "full physical incarceration" that marks confinement in a jail-like setting. See *United States* v. *Woods*, 888 F.2d at 655. Accordingly, it is reasonable for BOP to interpret "official detention" as not covering periods of pretrial residence in a community treatment center.

The inconsistent rulings in the Eighth and Ninth Circuits regarding the interpretation of Section 3585 will subject BOP to different requirements in different jurisdictions, and will make the amount of time a defendant must serve on his sentence depend on the place of his confinement. That difference in treatment will result in particularly great difficulties in sentence calculation for prisoners who are moved among several different BOP facilities during the service of their terms. A uniform rule is needed. Accordingly, this Court should grant certiorari to resolve the conflict between the court of appeals' decision and the Ninth Circuit's decision in *Mills*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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